Supreme Court, U.S.
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No. [redacted]

Supreme Court of the United States
October Term 1996

MOMCILO CVIJANOVIC,
Petitioner,

v.

LORAL CORPORATION,

and

INTERNATIONAL BUSINESS MACHINES CORPORATION,
Respondent

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

Petition for Writ of Certiorari

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80 pp

I. STATEMENT OF QUESTIONS PRESENTED

1. Must the court on motion for summary judgment in an employment discrimination case in the reduction-in-force context demonstrate that it has considered the material facts hidden beneath the cloak of corporate downsizing?

2. Is it appropriate to grant summary judgment when the only reason an individual plaintiff has failed to plead key elements of a case is because the corporate defendant intentionally stonewalled him and prevented him from discovering the necessary facts?

3. Did the lower court err in granting summary judgment for the defendants, IBM and Loral?

II. PARTIES

The party to this petition is Momcilo Cvijanovic

The parties in the courts below were Momcilo Cvijanovic, Loral Corporation and its predecessor, IBM Corporation

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IV. PRIOR OPINIONS

The Opinion sought to be reviewed is an unpublished per curiam opinion, No. 95-3147, decided September 12, 1996 (see Appendix A) The District Court opinion, Cvijanovic v. IBM, et al., No. 95-0511-A, is unpublished (see Appendix B).

V. JURISDICTION

Petitioner seeks this Court's review of the judgment entered on September 12, 1996 by the United States Circuit Court of Appeals for the Fourth Circuit by a Petition for Writ of Certiorari, pursuant to the jurisdiction conferred by 28 U.S.C. Sec. 1254(1). This Petition is timely filed because it was delivered within 90 days of September 12, 1996, the date of entry of judgment in the court below. Rules 13.4 and 29.2

VI. STATUTES INVOLVED

29 U.S.C. Sec. 623(a)(1):

"It shall be unlawful for an employee to fail or refuse to hire or to discharge any individual or otherwise discriminate against any individual with respect to his compensation, terms, conditions or privileges of employment, because of such individual's age."

42 U.S.C. Sec. 2000e-3(a):

"It shall be an unlawful employment practice for an employer to discriminate against any of his employees or applicants for employment ... because he has made a charge, testified, assisted, or participated in any manner in an

investigation, proceeding or hearing under this subchapter."

42 U.S.C. Sec. 2000e-2(a)(1)(2):

(a) Employer practices
It shall be an unlawful employment practice for an employer -

(1) To fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions or privileges of employment, because of such individual's race, color, religion, sex or national origin; or

(2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.

VII. STATEMENT OF CASE

Procedural History

Plaintiff filed a civil Complaint in the District Court for the Eastern District of Virginia, Alexandria Division on April 21, 1995, case no. 95-511-A, Cvijanovic v. IBM and Loral, before Judge Leonie M. Brinkema. Judge Brinkema dismissed two Counts of Plaintiff's case alleging Defamation of Character (because it was time-barred) and Intentional Infliction of Emotional Distress (because it failed to state a claim upon which relief could be granted).

Plaintiff proceeded with the remaining parts of his Complaint, alleging National Origin and Religious

Discrimination, Age Discrimination, and Retaliatory Discharge. IBM was equally liable as Loral Corporation for the Plaintiff loosing his livelihood. However Judge Hilton erroneously allowed IBM to be severed from the case. Loral Corporation remained in the case and subsequently filed a motion for summary judgment on the remaining counts of the Complaint, which was granted by Judge Hilton on November 9, 1995.

Plaintiff appealed Judge Hilton's ruling to the United States Court of Appeals, 4th Circuit. On September 12, 1996, the 4th Circuit issued an opinion affirming Judge Hilton's ruling. A copy of the opinion is included in Appendix A. Plaintiff attempted to appeal to the 4th Circuit en banc; however, my attorney withdrew from the case on September 26, the very day the en banc appeal was due. I attempted to file an en banc appeal on October 6, 1996 on my own, but was not allowed to do so pursuant to Federal Rule of Appellate Procedure, Rule 40, which limits the time frame for applying for en banc appeals to 14 days.

Plaintiff now seeks a writ of certiorari, requesting the Supreme Court of the United States to reverse the 4th Circuit's decision to affirm the District Court's grant of summary judgment for defendant and remand this case to the District Court for a full trial on the merits.

Factual Summary

Plaintiff came to the United States from the former Yugoslavia in 1958, with the sponsorship of Stanley Taxel, who was an American pilot saved from the Nazis by the plaintiff's father in World War II. (see Appendix K). Upon arriving in the United States, Plaintiff engaged in a course of study at Marist College and Vassar College, eventually

earning a M.S. degree in Solid State Physics in 1974. Plaintiff began working for IBM in 1964, in the General Technology Division based in Fishkill, New York. In 1978, plaintiff transferred to the General Technology Division in Burlington, Vermont. Eventually, plaintiff ended up in the Federal Systems Division located in Manassas, Virginia. Plaintiff began work in Manassas in 1985.

Several important things happened in the period between June 1992 and February 1993. In 1992, a fellow employee named John Seliskar began making insulting and scurrilous remarks to me about Serbian people, no doubt fueled by the sensationalized news accounts coming out of Bosnia. These remarks were directed toward me for nearly six months before I finally went to Mr. Seliskar's manager, Frank Barrett, for help. Mr. Seliskar continued to make remarks. Then in February, 1993 I attended a class led by Martha Novelly. When I entered the classroom and she saw my name, she asked me my nationality. When I told her I was Yugoslavian, she stated that she was Croatian Catholic. I responded I was Orthodox Serbian. Anyone who has watched the news knows that the relationship between the constituent people of the former Yugoslavia are tense to say the least. She then told me to get out of the room. I did not leave however. This was the final straw. Because of my experience with Mr. Seliskar, I decided to go directly to the Human Resource Department.

I went to the Human Resource Department directly, without first consulting with Don Taylor, who was at the time my second line supervisor. When I told Taylor afterwards that I had spoken with personnel about this harassment, he became furious. When IBM's personnel department did not resolve the issue to my satisfaction, I consulted with private attorneys regarding the matter. Several of these attorneys

were in contact with IBM as late as February 17, 1994 (see Appendix I). Within two to three weeks of telling Taylor about my contact with personnel regarding harassment of me by other IBM employees, I was transferred to 9010 status for 50% of my time. 9010 status is a deathknell. Essentially, all you do on 9010 is read manuals and attend classes. You are surplus labor. Being placed on 9010 status was particularly problematic in this time period because IBM federal systems was in the midst of negotiations to be acquired by Loral Corporation. I stayed on 9010 status from March 1993 until about July 25, 1993. Thereafter, I was placed on the Modular Assembly Line for 100% of the time from July 25, 1993 until November 15, 1993. The Modular Assembly Line is a grade 17/18 job. At the time, I was a Staff Engineer/Scientist level 55 grade. When my stint on the Assembly line ended, I was reassigned to 9010 status, this time for 100% of my time. I stayed on 9010 status until being terminated by IBM's successor -- Loral Corporation.

In the period leading up to Loral's acquisition of IBM, IBM offered a series of retirement incentive packages, all of which I resisted taking until February 28, 1994 -- just before IBM was acquired by Loral. When I finally took a retirement package, it was only after being demeaned and harassed by Don Taylor, who was responsible for putting me on 9010 status and the Modular Assembly Line. I took copious contemporaneous notes of every discussion I had with Taylor regarding my retirement. Transcribed copies of these notes are attached in Appendix J.

While I was being relegated to 9010 status and the modular assembly line, my diagnostic job was given to Tom Potter, a young man in his thirties. IBM gave him my job on July 16, 1993. At the time, I was called to a meeting along with Mary Wray who was my diagnostic team partner and

also on 9010 status with me. Interestingly, Don Taylor and Tom Potter arrived late and together to the July 16 meeting. The facilitator of the meeting asked who was going to take over diagnostic work. Since Ms. Wray and I were diagnostic engineers who had been placed on surplus status, we gave each other a quizzical look. Tom Potter raised his hand to say he was going to take it. Don Taylor congratulated him on stepping up to the challenge -- or something to that affect. I was stunned. Notably, at Mr. Potter's deposition he claimed that he had been doing diagnostic work prior to July 16 meeting. That was a lie. Had I had the opportunity to present witnesses at trial, I could have proven this. Instead, I have attached an Affidavit of Surendra Singh who swears that Potter did not do diagnostic work prior to taking my job (see Appendix L). In fact, on several occasions, I was called off the assembly line to train Mr. Potter and to help him out in diagnostic problems he could not solve himself.

Prior to being assigned to 9010 status and later to the modular assembly line, I had received a favorable review from my former first line supervisor, Mike Palmer. Copies of these favorable reviews are included in Appendix F. Six months later, when Taylor became my first line supervisor and while Loral was looking to RIF older IBM employees, my review plummeted. Remarkably, Taylor made sharply critical remarks about my analytic ability even though he had no first hand opportunity to review it. Taylor had always been my second line supervisor at IBM. All that he knew about my work, he knew from my former first line supervisors (performance appraisals were typically 3 or better).

Don Taylor was my first line supervisor for six weeks in the period immediately after Loral acquired IBM. In those six weeks, I was on 9010 status for 100% of the time. I did no analysis. I did no communicating. I did none of the things

that Taylor evaluated me on. His scathing comments about my job performance cannot be reconciled with any of the written comments on my previous evaluations. Based on this, I cannot believe the district court did not allow me to go to trial to prove what a sham and pretext Taylor's reviews were. For example, I could have shown that despite the damning remarks about my analytic ability, I was called upon to train my replacement, Tom Potter, and to bail him out when he could not solve a problem. And solve them I did! I was forced to hand over all my documentation on how to do Diagnostics. Actions do speak louder than words.

Unfortunately, based on the poor rating given to me by Don Taylor and rubber stamped by other members of the review board, I was ranked 39th out of 40 staff scientists. As a result, I was categorized as surplus labor by Loral and laid off in its RIF. This lawsuit followed.

Summary of Argument

This case is not a new story. Scores of Americans in recent days have gone through similar trauma as a result of "reductions-in-force" and corporate downsizing. Indeed, it is because so many Americans in recent days have faced corporate downsizing that reversible error occurred in this case. It seems Judge Hilton assumed that because my former employer, Loral Corporation, was in the midst of a reduction-in-force and corporate downsizing that it could not also be guilty of employment discrimination and retaliatory discharge.

By granting Loral's motion for summary judgment, Judge Hilton concluded that termination of Plaintiff's employment by Defendant was the result of corporate downsizing, without more. On the day of the hearing on the Motion for Summary Judgment, Judge Hilton stated "All right

Mr. Lucas. I just heard one of these cases." This statement of Judge Hilton's record reveals his predisposition towards granting summary judgment in favor of corporate defendants. I did not have a full and fair opportunity to present my case as required by law.

With the complicity of Judge Hilton, my former employer used "corporate downsizing" like a magician's cloak to conceal its improper conduct towards me. In a sense, what Loral did was not unlike the behavior of a murderer who then sets a fire to conceal his crime. Careful investigators who consider all of the underlying facts can usually determine when a victim was actually murdered first. Of course, in my case the building was already burning since the corporate downsizing had already begun. However, that didn't stop the corporate arsonist from seizing the opportunity to commit its crime against me while the fire raged. By granting Defendant's motion for summary judgment, Judge Hilton behaved like a cynical fire chief who stopped an investigation simply because he had seen cases like this before. Had he bothered to look beneath the ashes of the fire or the cloak of corporate downsizing, he would have seen all the tell-tale signs of a cover-up.

If the Supreme Court allows Judge Hilton's ruling to stand, it will help validate an unscrupulous corporate formula that thwarts the equal protection clauses of the U.S. Constitution and allows corporations to discriminate and retaliate against people because of their ethnicity, religion or age, so long as the corporation can conceal its behavior beneath a cloak of corporate downsizing. Loral and its predecessor IBM have the formula down pat. That's why only one plaintiff so far has successfully brought suit them. See Rathemacher v. IBM, No. 88-3463 (D.N.J. 1991). This honorable Court must step in and stop this opportunistic

corruption of the law.

I understand that summary judgment is a legitimate legal tool that can help the court resolve clear cases without wasting everyone's time at trial. But even if summary judgment is legitimate, that does not mean it is appropriate. In my case, summary judgment was not appropriate because the judge failed to fully consider the credible evidence I presented that pointed to discrimination hidden beneath the cloak of corporate downsizing.

For example, Judge Hilton ignored the fact that for 28 years I had received "exceeded expectations" ratings on my reviews, including the review 6 months preceding my termination. Suddenly, just 6 months after this favorable review and after a manager with a long standing grudge against me became my first line supervisor, I became the 39th out of 40 staff scientists in rankings. This happened just in time to be put on the list of "surplus labor" to be laid off by Loral, along with other employees over the age of 40.

Judge Hilton also ignored the fact that my precipitous fall in ratings came not long after I had been subjected to disparaging and scurrilous remarks about my ethnic heritage (Serbian) and my religious beliefs (Serbian Orthodox). I had reported these incidents to high-level management in the company, which infuriated my first line manager, Don Taylor. This is the very same manager responsible for my precipitous drop in rank only six months after a favorable review. While it is true that Taylor's ratings and rankings were presented to a panel for a "review", I should have been able to present evidence that this review was also tainted. Three people sat on the review panel. Don Taylor, who had been my second line supervisor and was now my first line supervisor. The second person was Gino Manzo, who also had reasons to

retaliate against me because I was a potential whistleblower on one of his projects. The third person was Mr. Konosky. Surprisingly, we hear very little about him and he did not even sign the final evaluation that resulted in my RIF. The Review Boards document was kept a secret. It was only discovered in May of 1995 when I got a copy of the document from Mr. Turner (from the EEOC office). This was long after being RIF from IBM/Loral.

Judge Hilton also ignored the fact that proving "intent" and "improper motives" takes a lot more than just numbers and statistics. It simply isn't a pure science. Intent and motive are measured by subtleties and nuances. It is measured by the demeanor and credibility of witnesses, which should be left to the domain of the jury. By granting Defendant's motion for summary judgment, Judge Hilton deprived me of the opportunity to properly prove intent and motive and Defendant was able to conceal its unlawful behavior beneath a cloak of corporate downsizing that was artfully woven from numbers and statistics that were purposefully skewed.

Summary judgment was also inappropriate because Judge Hilton failed to give me the opportunity to fully develop my case through the discovery process and prove that I had been the victim of age discrimination. When defendant filed its motion for summary judgment, I could not present evidence about the characteristics of the employees who remained at Loral (which according to the 4th Circuit is key to pleading discrimination in the RIF context under Mitchell v. Data General Corp., 12 F.3d 1310 (4th Cir. 1993)) because Loral refused to answer a key interrogatory (See Appendix D). In other words, I was stonewalled by defendant. Thus, the reason I did not plead prongs 3 and 4 of the Mitchell test was not because upon discovery I learned that the necessary

facts did not exist. Rather, I did not plead them because Loral adopted a tactic to prevent me from getting this information, obviously knowing that a full and forthright answer to my discovery request would have meant the end of the case for Loral.

Because of Loral's stonewalling, affirming the decision of the 4th Circuit would be a grave injustice and make a mockery of our system of justice. It will validate the stonewalling tactics used by large corporate defendants to thwart individual defendants who don't have the means to force compliance with discovery requests. It will create yet another judicial formula for in-house counsels to use to conceal improper discriminatory conduct with -- step one: discriminate while hiding beneath the cloak of a RIF; step two: block discovery so victim cannot prove that the RIF was a pretext for discrimination. Surely this court, the ultimate guardian of our justice system, does not want to be pawn in this mockery of justice.

VIII. ARGUMENT

A.

JUDGE HILTON ERRED IN GRANTING SUMMARY JUDGMENT BECAUSE HE FAILED TO PROPERLY CONSIDER THE MATERIAL FACTS CONCEALED BENEATH LORAL'S CLOAK OF "CORPORATE DOWNSIZING"

Summary judgment is appropriate only when the moving party demonstrates that there is no genuine issue of material fact and the evidence establishes that the moving party is entitled to judgment as a matter of law. Celotex v. Catrett, 477 U.S. 317, 323 (1986). In a motion for summary

judgment, the court must interpret the facts in favor of the non-moving party and draw all reasonable inferences from those facts in favor of the non-moving party. Furthermore, the court must accept the non-moving party's evidence as true when considering the merits of summary judgment. The non-moving party need not establish that he is entitled to judgment on the merits of the case. Instead, he must only establish that a genuine issue of material fact exists to survive summary judgment. Id. See also Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247-248 (1986). Summary judgment does not afford a satisfactory vehicle for disposing of complex issues. Hillary Cairy Inc. v. Kroger Co., 402 F.2d 968 cert.denied 89 S.Ct. 2096, 395 U.S. 961, 23 L.Ed.2d 748.

1. **Loral's Decision to Terminate Me and Other Employees Over the Age of 40 Was Based On Improper Age Discrimination Motives**

In considering a motion for summary judgment in a discrimination case, a trial court must take special care, because motive is often the crucial issue. Douglas v. PHH Fleetamerica Corp., 832 F. Supp. 1002, 1008 (D. Md. 1993) citing Ballinger v. North Carolina Agricultural Extension Service, 815 F.2d 1001, 1005 (4th Cir.). See also Pfeifer v. Lever Bros. Co., 693 F. Supp. 358 (D. Md. 1987)(Courts must take particular care in resolving ADEA suits pursuant to Motion for Summary Judgment).

Judge Hilton did not use the proper legal standard for summary judgment in my case. Not only did he not give "special care" to consideration of the facts in my case, his own comments show he actually gave NO care to my facts. As my former lawyer approached the bench for the hearing on the Motion for Summary Judgment on November 9, 1995, Judge

Hilton stated "All right Mr. Lucas. I just heard one of these cases." (see Appendix C). He then went on to rule summarily that I had not been discriminated against but was rather just a victim of corporate downsizing. Had Judge Hilton given my case "special care", as the law requires, he would have seen that the facts specific to my case create a genuine dispute which should have been left to the jury to decide.

The Court of Appeals should have reversed Judge Hilton's erroneous decision to grant summary judgement to IBM/ Loral. Here, as in Chipollini v. Spencer Gifts, Inc., 814 F.2d 897, citing Furnco Construction Corp. v. Waters, 438 U.S 567, 577, 98 S.Ct 2943, 2949, 57 L.Ed.2d 957 (1978), "there arises a presumption of illegal discrimination when a qualified person in a protected age group is discharged and replaced by someone (e.g. Tom Potter at IBM) sufficiently younger to raise an inference of age discrimination".

The Court in Chipollini applied the correct Standard, "the shifting burden of proof set forth in McDonald Douglas are designed to assure the 'plaintiff has his day in court despite unavailability of direct evidence.' Id. at 898. In this case, Loral refused to release direct evidence contained in Interrogatory #5 (see Appendix D) that would have clearly established a basis to deny Summary Judgement.

In resisting a motion for summary judgment, the plaintiff must be given a full and fair opportunity to demonstrate by competent evidence that the presumptively valid reasons for termination were in fact a cover-up for a discriminatory decision. Rea v. Martin Marietta Corp., 29 F.3d 1450, 1455 (10th Cir. 1994) citing McDonnell Douglas. Because Judge Hilton improperly concluded that my case was just like the one before it, I was not given a full and fair opportunity to demonstrate that Loral was using its corporate

downsizing as a cloak to cover-up discriminatory behavior.

The facts are similar to Plaintiff in Gallo v. Prudential Residential Services, 22 F.3d 1226 (2nd Cir. 1994). In the case before this court, a former IBM Manager, now working at Loral, intentionally laid off a 58 year old person, absolutely qualified after 29 years of good service to IBM, and they purposely discriminated against an older worker in preference to a much younger man, Tom Potter, and hid this "discriminatory animus" under a mask of "reduction-in-force". Court held that Prudential's decision to discharge because of "reduction-in-force" was a "pretext" for intentional age discrimination (Id. 1228).

The ADEA provides that: "It shall be unlawful for an employer to fail or refuse to hire or to discharge any individual or otherwise discriminate against any individual with respect to his compensation, terms, conditions or privileges of employment, because of such individual's age ... " 29 U.S.C. sec. 623(a)(1). In order to prevail in an ADEA case, plaintiff must plead a prima facie case of age discrimination. The defendant is then given an opportunity to rebut the prima facie case by articulating a legitimate, non-discriminatory reason for its actions. Finally, the plaintiff is provided with the opportunity to prove that the reason given by defendant is a mere pretext for discrimination and that age was a more likely reason for the employment action. Duke v. Uniroyal, Inc., 928 F.2d 1413,1417 (4th Cir.1991).

To establish a prima facie case in a reduction-in-force context, plaintiff must show: 1) that he is in the protected age group; 2) he was discharged; 3) at the time of the discharge, he was performing his job at a level that met his employer's legitimate expectations, and 4) that persons outside the protected age class were retained in the same position or there is some other evidence that the employer did

not treat age neutrally in deciding to dismiss the plaintiff. Id. However, the prima facie test should not be viewed as a rigid formula which requires plaintiff to satisfy each element. Instead, a plaintiff can make out a prima facie case by offering evidence adequate to create an inference that an employment decision was based on a discriminatory criterion illegal under ADEA. Cohen v. Austin, 901 F. Supp. 945, 950 (E.D. Pa. 1995).

I properly pled a prima facie case of age discrimination in the reduction-in-force context. First, I am over 40 years old; second, I was fired; third, at the time I was fired, I had received reviews for 28 years consistently showing that my work "exceeded" expectations; and fourth, my job was given to a man under the age of 40. To rebut this prima facie case, Loral contended that I was dismissed as part of a reduction in force and that my ranking was 39th out of 40 employees. In response to this, I presented evidence of pretext. For example, my ranking had suddenly plummeted after 28 years of service. The reasons for my fall in ratings were themselves pretextual because of Don Taylor -- who had ample motives to retaliate against me, as discussed previously in this brief. I presented evidence showing that 210 of the 325 employees laid off by Loral were over the age of 40 and that 100% of the employees laid off from my division were over 40 years old. Had I been given the opportunity to do so, I would have shown that IBM had corporate environments that fostered age discrimination and that Loral inherited this culture when it retained IBM managers at the Manassas plant. Thus, while it may be true that isolated comments, unrelated to the challenged action are insufficient to show discriminatory animus in termination decisions, I should have been able to show that IBM and Loral had corporate cultures that discriminated based on age. See Rea, id.

The case Rathemacher v. IBM, 57 F.E.P. 460 (D.N.J. 1990) is particularly instructive on this last point because it establishes as a matter of judicial notice that IBM had an internal plan or formula by which it isolated, humiliated and downgraded employees it sought to discard. In Rathemacher, plaintiff sued IBM for age discrimination. IBM moved for summary judgment on that basis plaintiff could not claim he had been discriminated against because he had voluntarily retired and took a buy out settlement. In defending against the motion for summary judgment, Rathemacher alleged that he did not voluntarily retire but was instead "constructively discharged" because he was forced into early retirement after he was subjected to discrimination on the basis of his age. In denying IBM's motion for summary judgment and its subsequent motion to reconsider, the court held that plaintiff "presented enough evidence of discrimination to establish an issue of material fact," including evidence which "suggests that age discrimination is part of defendant's corporate environment."

Like the plaintiff in Rathemacher, I presented ample evidence to establish a genuine issue of material fact as to whether I was discriminated against versus merely a victim of corporate downsizing. Historically, my performance was rated "2" or "3" overall, by various managers over the course of 29 years. In my 10/15/93 review, I was rated as "exceeded expectations" in three key areas -- namely, Planning, Implementation, and Leadership. (The ratings were "far exceeded"; "exceeded"; "met"; and "did not meet.") In that same review, Mike Palmer, my first line supervisor wrote: " Mo, has good analytical skills and builds solid plans for the various exceptional diagnostic/characterization projects and problems that he is involved in." (see Appendix F) In the same review, there was also a notation which stated: "Mo, at times has assumed the chairmanship of the weekly diagnostic

meeting and has run that meeting to a successful conclusion. He prepares the actions and plans for the VLSI Technical meeting and presents to management and peers...." It also rates my communication skills as "neutral" but notably, not "negative." (see Appendix G) Contrast these comments with the comments of Don Taylor six months later and you will see that something is amiss. Taylor wrote: "Responsible for logic circuit electrical data analysis. Poor analytical ability often drawing improper conclusions from data." That's a pretty stark decline. Of course, what's odd is that Taylor would have any way to gauge this since he was my second line supervisor for the bulk of the time and when he was my first line supervisor, I was on 9010 status, a position where no analysis was required at all. Moreover, when he served as my second line supervisor, Taylor had several opportunities to comment on my reviews regarding my "unsatisfactory communication skills." English is my second language and I speak with an accent. However, this has never prevented me from communicating effectively and, as noted previously, I was able to successfully run meetings -- accent and all! Ironically, after I was placed in a level 17/18 assembly line job while my diagnostic job was given to a much younger man (Tom Potter), I had to be called off line to train him and help him solve complex problems, (only to be relegated back to the assembly line once I solved the problem for him!) If I was such a worthless employee with poor analytic skills who often reached the wrong conclusion, then why was I trusted to train and bail out my replacement when he could not cut it. "If ratings are wildly out of line with other indicia of an employee's performance then one may question whether the rating system had a bias in its implementation." See Conkwright v. Westinghouse Electric Corp., 933 F.2d 231, 235 n. 4. Lowly ranked employees let go in reduction of force context must demonstrate that their rankings had been tampered with in order to "do in" older workers. Gustovich

v. AT&T Communications, 972 F.2d 845, 848 (7th Cir. 1992).

Because summary judgment was improperly granted even in the face of the disputed fact regarding the tampered rating system and sham review system, I was never given the opportunity to prove that my ratings by Taylor were a sham. I was not able to call other employees to the stand who had similarly been the victim of tampered ratings. If I had the opportunity to go to trial, I might have been able to prove that the rating system adopted by Loral was artificial or irrational, as the plaintiff did in Duke v. Uniroyal, 928 F.2d at 1419.

In that case, plaintiff won his discrimination claim at trial. Defendant appealed. In refusing to overturn the jury's verdict, the 4th Circuit court reviewed the evidence in the light most favorable to the plaintiff (as it should in a summary judgment case as well) and stated that it must defer to the judgment of the jury, even if the court's judgment on the evidence differs. Id. at 1417. In this case, plaintiff presented evidence that the merit rankings of Uniroyal employees were possibly artificial or irrational. Evidence was also presented showing that the plaintiffs performed better against stated standards than did other employees ranked higher. The plaintiff also showed that several documents relating to the rankings of employees were developed within the termination period and in some cases were questionable. Documents which purported to be the rankings of Fox but turned out to be inaccurate documents prepared for litigation purposes. When the trial judge looked at the original documents, they revealed that three other employees were ranked below plaintiff. All of them were younger than the plaintiff, had less experience and were retained in the RIF. Plaintiff also showed that even though he was terminated as a low performer, he was hired six months later as an independent

consultant for Uniroyal. One of the reasons given for plaintiff's termination was that his sales territory was terminated. Evidence offered at trial showed that his territory was eliminated for two weeks and then after his termination, more representatives were servicing his area than before.

These facts are significant because they demonstrate the type of evidence that can be developed at a full trial. Had I had the opportunity to do so, I would have shown that Loral's rating system was irrational or artificial and so wildly out of line with other indicia of my performance to suggest bias. At trial, jurors can hear two versions of what happened and resolution of the case depends upon which witnesses are credible. Determining witness credibility is the job of the jury. Herold v. Hajoca Corp., 864 F.2d 317, 320-321 (4th Cir. 1988) I am an individual plaintiff of modest means who has spent $28,500 fighting for justice. If I had greater resources, perhaps I could have deposed these people prior to trial and created a record to defeat summary judgment. However, it never occurred to me that Loral could beat me before I even had the opportunity to present my full case. In fact, when I urged my former lawyers to depose some of the people who could support my side of the story, including Surendra Singh, my lawyer believed we would have the opportunity to examine him at trial. I should have been allowed to present my evidence to the jury and not have the rug pulled from under me by a procedural sleight of hand.

2. Loral Terminated Me in Retaliation for my Complaints to Senior Management About Discriminatory Conduct

Even if enough facts do not exist to raise a question as to age discrimination, such facts do exist regarding retaliatory discharge. Title VII provides that:

> "It shall be an unlawful employment practice for an employer to discriminate against any of his employees or applicants for employment ... because he has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding or hearing under this subchapter."

42 U.S.C. Sec. 2000e-3(a):

There is a long history beginning in 1993 between Taylor and myself that gave him the motive to retaliate against me. Even though Loral management has closed ranks behind the story that my termination was part of a legitimate business decision, I presented enough evidence to challenge this contention.

Starting in June 1992, during my employment with IBM, I was the victim of several scurrilous comments regarding my national origin by John Seliskar, an IBM employee. No doubt fueled by sensationalized media accounts of the ongoing civil war in Bosnia, he made comments such as "you're a Serbian Orthodox raping women and killing young children and burying them alive." Then, on February 18, 1993, I attended an IBM marketing class attended by Martha Novelly, who was an IBM instructor at a higher pay grade then me. After I entered the classroom and handed Ms. Novelly my name tent, she asked me my nationality. I told her I was Yugoslavian. She replied, "Well, I'm Croatian Catholic." I responded, "I'm Orthodox Serbian." She then told me to "Get out of my class." I did not leave the classroom but afterwards, I contacted IBM's Human Resource Department to complain about national origin discrimination by Novelly and Seliskar. IBM investigated the allegations and

I was dissatisfied with the results. I had wanted these people to be severely reprimanded, perhaps even fired. They were not even written up. I then asked for an apology. Human resources said they could not force anyone to do that. In frustration, I contacted a private attorney to make certain that my rights were protected. Clearly, they were not since exactly what I feared would happen did happen: I was the victim of a retaliatory discharge.

After I made my initial complaint to human resources on about February 23, 1993, I told Don Taylor -- who was my second line supervisor at the time. He became furious that I went to Human Resources instead of coming to him first. From that point on, my position began to deteriorate. Within two to three weeks, I was assigned to 9010 status for about 50% of my time. 9010 status is a death knell. Basically, if you are assigned to it, you have become excess labor. You have no duties other than to attend classes and read manuals which are suppose to improve your work skills. By July, I had been assigned to a level 17/18 modular assembly line job. In November, I was placed on 9010 status exclusively. In February 1994, Don Taylor became my first line supervisor at Loral, which had just acquired IBM. I was "working" in 9010 status and therefore, he had no opportunity to see me do any real work, let alone evaluate it. Nevertheless, he was finally in the position to manipulate my evaluation negatively, which he did.

Prior to IBM's acquisition of Loral, Taylor tried to force me to take so-called "early retirement." When I resisted, Taylor became extremely frustrated with me. And, when I discussed the matter with other managers, Taylor again became furious and even went so far as to tell me in no uncertain terms to keep my mouth shut. Ironically, when I finally got to the point where I had to succumb to Taylor's

incessant pressure, I learned that Taylor did not have the authority to offer me an early retirement package. Thus, I simply took regular retirement when IBM finally closed its doors.

What Taylor ended up with at Loral was the authority to destroy my career. Taylor had a reputation amongst the managers as being one of the ones you don't cross. As one fellow manager put it, "the only thing that SOB knows is how to play with people's minds." I crossed him by going over his head about the ethnic and religious discrimination and by talking to other employees about early retirement offers. And he did more than play with my head, he destroyed my career. When Loral took over, it was left to Taylor and a panel of two other managers to determine who would be laid off and who would be retained. I should have been allowed to present evidence at trial which would have shown that Taylor exerted undue influence upon the review process.

In addition, I should have been able to show that the second manager on the panel, Gino Manzo, also had reasons to retaliate against me. He was the second level manager at VLSI. For four years, his group was experiencing a technical problem that could not be solved. In 1992, I was called upon to help and was able to solve the problem. Because VLSI did government contracts, solving the problem meant saving the taxpayer $800,000. Thereafter, it was estimated that the problem I solved could save the taxpayer $1 million per year for the life of the contract. Surendra Singh, whose Affidavit is attached, was aware of my accomplishment. What did not occur to me was that I now knew Gino Manzo's dirty little secret. Perhaps they were intentionally charging the American taxpayer extra money? Was I now a potential whistleblower? Manzo plainly had reasons to get me out of Loral too!

It is well settled that granting of summary judgment in employment discrimination cases, "which usually necessarily involves examining motive and intent, ... is especially questionable." Batey v. M.P.W. Stone, 24 F.3d 1336 (11th Cir. 1994) citing Hayden v. First Nat'l Bank, 595 F.2d 994, 997 (5th Cir. 1991). Accord Johnson v. Minnesota Historical Sociaty, 931 F.2d 1239, 1244 (8th Cir. 1991) ("Summary judgement should seldom be used in cases alleging employment discrimination.").

In Chipollini 814 F.2d 899, the issue of defendant's intent was called into question, as in this case, once raised "sufficiently", the plaintiff has established an issue of material fact, if genuine, is sufficient to preclude summary judgment. In Chipollini, on remarkably similar facts to this case, the Court ruled that plaintiff was indeed entitled to a jury trial on the merits Id at 901.

Interestingly, you hear nothing about the third member of the panel, Mr. Konosky. In fact, he did not even sign the damning reviews which Loral allegedly relied upon in choosing to lay me off. (see Appendix G) Had I been allowed to proceed to trial, I may have been able to prove that the review process was itself pretextual and was nothing more than a rubber stamping process since Taylor and Manzo could basically force their will on Konosky. The presumption that the ratings and rankings were fair because the other panelists served as a safety check is flawed. Safety checks only work if everyone on the panel is neutral and on an equal footing. I should have been able to present evidence to the jury to prove this.

B.

THE DISTRICT COURT ERRED IN GRANTING SUMMARY JUDGEMENT BEFORE I HAD THE OPPORTUNITY TO COMPEL DISCOVERY OF KEY EVIDENCE THAT DEFENDANT REFUSED TO VOLUNTARILY DISCLOSE

When Judge Hilton granted Summary Judgment because he failed to properly explore the material facts concealed beneath the cloak of corporate downsizing, choosing instead to rely on unrelated facts he heard in a prior case, he created a record that was used on my 4th Circuit Appeal. What the 4th Circuit opinion seems to say is that Judge Hilton's error was not prejudicial because even if he relied on improper considerations, plaintiff still could not demonstrate the existence of disputed material facts because I could not plead facts to support prongs 3 and 4 of the Mitchell test. However, what the 4th Circuit may not have considered is the reason I did not plead facts to support the Mitchell test is because the defendant stonewalled me by refusing to answer discovery requests and inquiries from the EEOC.

Loral delayed 10 months before responding to initial EEOC inquiries that were initiated by my EEOC complaint. Mr. Turner of the EEOC wrote a letter to me indicating that he was having a problem getting information from IBM and Loral concerning my allegations. Mr. Turner told me that his superior had called several times, and IBM or Loral would not return calls to the EEOC. Finally, in response to a registered letter, IBM and Loral responded partially to the EEOC's request (see Appendix E).

Loral's response to the EEOC is flawed, because it clearly contradicts Mr. Potter's deposition. In his deposition he admitted that he never worked on the module assembly line. That was precisely my point. He took my job and I was forced to function at level 17/18, which was assembly line work. Yet in the EEOC response by Loral, they clearly stated on page 4, paragraph 3:

> "As a result, in July Mr. Cvijanovic, Mr. Potter and two other exempt engineers were temporarily assigned to the module assembly department... ."

The point here is that I was isolated, humiliated and discharged just like Mr. Rathemacher, but the difference is that I did not get my severance of $30,000. This is the typical IBM method used to get rid of people.

Thereafter, once the EEOC released my case to my former attorney, he submitted interrogatories -- including interrogatory no. 5 interrogatory (See Appendix D), which asked: "Provide the number of employees in each of the following age groups who remained employed at Loral Federal Systems at the end of LFSRA?" In response, Loral stated: "Subject to and without waiving its objections, Loral responds by stating that the requested information does not exist." Does not exist!? Who are they fooling? The information is everywhere. It's in their files and working on their assembly lines. All Loral needed to do was look and compile the requested information. Could it be that Loral realized that had they been truthful in response to this interrogatory, it would have meant the end of their case? Frankly, had defendant been honest and forthright, I probably would have been in the position to move for summary judgment against them. Instead, defendant adopted a

stonewalling tactic that paid off, albeit by spitting in the face of justice.

Because of this stonewalling, I apparently was not able to adequately plead facts to support the Mitchell test. However, as stated previously, when making out a prima facie case for violation of the ADEA, we need not be rigidly tied to the formula of the prima facie test. Instead, the plaintiff need only allege enough facts to create an inference of discriminatory conduct. What I can tell you is from factual personal observations. First, my diagnostic partner who was also on 9010 surplus status with me was in her mid thirties. She was not laid off but was transferred to a different department in Loral. On the rating sheet where I was in the lowest 10% , all of the other people in the bottom 10% with me were over 40. All of the people in the top 10% were in their thirties and of the 22 people in the middle 80%, only Mr. Suljana is over 40 (see Appendix H). I think that is pretty striking. I also showed that 210 of the 325 people laid off by Loral were over 40 years old and that 100% of those laid off from my division were over 40, I surely pled enough facts to create an inference of discrimination. Because of the existence of these disputed facts, the district court erred in granting summary judgment and the 4th circuit erred in affirming it.

IX. CONCLUSION

For the foregoing reasons and in the interest of equity and justice, I respectfully request this court grant my writ of certiorari in my case.

Respectfully submitted,

Momcilo Cvijanovic

Momcilo Cvijanovic
Petitioner

No. _____

Supreme Court of the United States

October Term 1996

MOMCILO CVIJANOVIC,
Petitioner,

v.

LORAL CORPORATION,

and

INTERNATIONAL BUSINESS MACHINES CORPORATION,
Respondent

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

Appendix to Petition for Writ of Certiorari

Momcilo Cvijanovic
Pro Se
8883 Sweetbriar Street
Manassas, Virginia 20110
(703) 368-1741

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APPENDIX A

UNPUBLISHED
UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

Momcilo Cvijanovic Plaintiff-Appellant, v. Loral Corporation, Defendant-Appellee, and International Business Machines Corporation, Defendant.	No. 95-3147

Appeal from the United States District Court
for the Eastern District of Virginia, at ALexandria.
Claude M. Hilton, District Judge.
(CA-95-511-A)

Submitted: August 22, 1996

Decided: September 12, 1996

Before HALL, MICHAEL, and WILLIAMS, Circuit Judges.

Affirmed by unpublished per curiam opinion

COUNSEL

Matthew W. Lucas, LUCAS & LUCAS, Vienna, Virginia, for Appellant. Mark E. Baker, CROWELL & MORING, Washington, D.C., for Appellee.

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

OPINION

PER CURIAM:

Momcilo Cvijanovic appeals the district court's order granting summary judgement in favor of Loral Corporation ("Loral") in this action under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C.A. Section 2000e-3, 2000e-5 (West 1994), and the Age Discrimination in Employment Act ("ADEA"), 29 U.S.C.A. Section 62[illegible] 626 (West 1985 & Supp. 1996). On appeal, Cvijanovic contends that the district court erred in dismissing his claim of retaliatory discharge arising from his complaint to the Human Resources Department regarding ethnically disparaging comments made by other employees. In addition, Cvijanovic asserts that the district court erred in dismissing his claim of age discrimination. We affirm.

To sustain a claim for retaliation, the employee must establish: "(1) the employee engaged in protected activity; (2) the employer took adverse employment action against the employee;

* At the time the complaints were made, the facility where Cvijanovic worked was owned by International Business Machine Corporation ("IBM"). IBM sold the facility to Loral in March 1994. Cvijanovic's claim against both IBM and Loral were dismissed in the district court, and Cvijanovic appealed. IBM was voluntarily dismissed with prejudice as a party-appellee on February 13, 1996.

and (3) a causal connection existed between the protected activity and the adverse action." Ross v. Communication Satellite Corp., 759 F.2d 355, 365 (4th Cir. 1985). Assuming the existence of a prima facie case, Loral bore the burden of articulating a legitimate, nondiscriminatory reason for the discharge. Id. Loral met this burden by presenting overwhelming evidence that Cvijanovic was discharged pursuant to a reduction in force prompted by a steady business decline and that Cvijanovic was selected for layoff because he was ranked as less skilled than other employees.

Cvijanovic failed to meet his renewed burden of proving by a preponderance of the evidence that Loral's articulated reason were untrue or pretextual. See O'Conner v. Consolidated Coin Caterers Corp., ___ U.S.___. 64 U.S.L.W. 4243 (U.S. Apr. 1, 1996) (N0.95-354); Texas Dep't of Community Affairs v. Burdine, 450 U.S. 248, 252-53 (1981); McDonnell Douglas Corp. v. Green, 411 U.S. 792, 804 (1973). Cvijanovic asserts as evidence of pretext that one of the managers involved in the discharge decision had previously conducted a course of retaliation against Cvijanovic including reducing his responsibilities and assigning him to less demanding tasks. On the basis of these contentions, Cvijanovic urges this court to conclude there was sufficient evidence to survive Loral's motion for summary judgement. This we decline to do. In his brief before the court, Cvijanovic points to no real evidence that Loral's specific, logical, multilevel review and ranking of all employees prior to discharge was pretextual. In addition, even assuming his supervisor had previously retaliated against him (which is disputed, but not at issue in this appeal), it is undisputed that this manager was only one member of the managerial staff responsible for the discharge decisions. Therefore, the district court did not err in concluding that Cvijanovic failed to "show a genuine factual dispute over the employer's legitimate

nondiscriminatory explanation." Mitchell v. Data Gen. Corp., 12 F.3d 1310, 1317 (4th Cir. 1993).

Next, we concluded that Cvijanovic cannot prevail on his claim of age discrimination. In a reduction-in-force case, we apply a modified version of the McDonnell Douglas standard:

> (1) the employee was protected by the ADEA: (2) he was selected for discharge from a large group of candidates; (3) he was performing at a level substantially equivalent to the lowest level of those of the group retained; and (4) the process of selection produced a residual work force of persons in the group contained some unprotected persons who were performing at a level lower that at which he was performing.

Mitchell, 12 F.3d at 1315. Indisputably, Cvijanovic satisfies elements one and two; he is in the protected class and was discharged. However, Cvijanovic failed to meet the third and fourth elements. The only evidence Cvijanovic can point to are statistics regarding the number of employees discharged and the ages of those employees. However, Cvijanovic's statistics are meaningless, because they are unaccompanied by statistics of the age composition of the work force from which the employees were laid off or statistics regarding the comparative skill levels of the employees by age. See Henson v. Liggett Group, Inc., 61 F3d 270-77 (4th Cir. 1995). Consequently, the district court properly dismissed Cvijanovic's ADEA Claim.

For the foregoing reasons, we affirm the order of the district court. We dispense with oral argument because the facts

and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

MOMCILO CVIJANOVIC, Plaintiff,	)	
V.	)	CIVIL ACTION No. 95-0511-A
INTERNATIONAL BUSINESS MACHINES, CORPORATION, LORAL CORPORATION	)	
Defendants.	)	

ORDER

This matter came before the Court on the defendants' motion for summary judgement. For reason stated from the bench, it is hereby

ORDERED that the defendants' motion is GRANTED, and this case is DISMISSED.

Claude M. Hilton
UNITED STATES DISTRICT JUDGE

Alexandria, Virginia
November 9, 1995

APPENDIX C

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF VIRGINIA
Alexandria Division

MOMCILO CVIJANOVIC, Plaintiff,	:	
v.	:	C.A.No. 95-0511-A
INTERNATIONAL BUSINESS MACHINES CORPORATION, et al., Defendants.	:	

HEARING ON MOTIONS

November 9, 1995

Before: Claude M. Hilton, Judge

APPEARANCES:

Matthew W. Lucas, Counsel for the Plaintiff

Anthony Herman and George Washington, Jr., Counsel for IBM

Mark E. Baker, Counsel for Loral.

Statement from the Joint Appendix page 302 lines 18 and 19, by Judge Hilton to Mr. Lucas, plaintiffs attorney:

"The Court: All right. Mr. Lucas, I just heard one of these cases."

I certify that the foregoing is a true and accurate transcription of my stenographic notes.

_____

Norman B. Linnell, CP, CM, Ce

***NOTE: Original documents are available upon request.

APPENDIX D

INTERROGATORY NO. 5:

Provide the number of employees in each of the following age groups who remained employed at Loral Federal Systems at the end of LFSRA:

20-29

30-39

40-49

50-59

60-69

RESPONSE:

Subject to and without waiving its objections, Loral responds by stating that the requested information does not exist.

Respectfully submitted,

Mark E. Baker (Va. Bar No. 25196)
CROWELL & MORING
1001 Pennsylvania Avenue, N.W.
(202) 624-2624
Counsel for Defendant
Loral Corporation

APPENDIX E

U.S. EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION
Washington Field Office

October 27, 1994

CHARGE No. : 100 94 0796
Charging Party: Momcilo Cvijanovic

R. H. Seraydarian
Director, Management and HR
Loral Federal Systems

Dear Mr. Seraydarian:

Enclosed is the Request For Information that was submitted earlier. Please review the information that you submitted in July and disregard all previously answered questions. I was unable to fax this information because I could not get connected using (703) 367 - 3640. I am also getting an operator recording when I dial (703) 367 - 2121. Please call me upon receipt of this letter at (202) 275 - 7045. Thank you for giving this matter your immediate attention. Our fax number is (202) 275 - 6834.

Sincerely,

Larry Turner
Investigator

Please respond to the questions below. Your reply should submitted by August 5, 1994, to the attention of Enforcement Supervisor Mazie F. Downs.

This request for information supplements our earlier request for a position statement. It must be answered separate and apart from the position statement, although you may incorporate by reference any relevant materials that you earlier submitted.

For the purpose of answering these questions, the "relevant period" is one year prior to the most recent violation alleged in the charge. The "relevant employee pool" consists of those employee under the authority of the highest level official involved in the action of which Charging Party complains.

SUBMIT ANY SUPPORTING DOCUMENTATION WHEN ANSWERING THESE QUESTIONS.

1. Submit all documents which describe or relate to layoff policy and procedures in the relevant employee pool during the relevant period. Include the criteria used in determining the ranking for the layoff and how each criteria is measured.

Explain whether and how these policies and procedures operate on a company-wide, department, job classification, or some other basis. State and document whether the layoff policies and procedures are governed by a collective bargaining agreement. Provide a copy of the agreement if applicable.

2. List all persons in the relevant employee pool who during the relevant period were subject to layoff. For each person, state and document the following information:

a. name, age national origin, and race;

b. job title and organizational unit;

c. date of hire;
d. applicable seniority date;
e. ranking according to the layoff criteria;
f. name, position title, role, age, national origin and race of the persons who participated in the layoff decisions.

3. List all persons in the relevant pool who were laid off during the relevant period. For each person, state and document the following information:

a. name, race, national origin and age;
b. job title and organizational unit;
c. date of hire;
d. applicable seniority date;
e. ranking according to the layoff criteria;
f. name, position title, role, race, national origin and age of the persons who participated in the decision to layoff this person.

4. If prior performance or a disciplinary record were among the factors considered in selecting persons for layoff, supply documents reflecting the performance and disciplinary history of persons in the relevant employee pool for the past three years.

5. State whether any persons or persons assumed any or all of Charging Party's job duties. If your answer is "yes" state and document the person (s) name, race, national origin, age, job title and organizational unit, date of hire, wage history, and your reasons for assigning this person (s) to these duties.

6. State and document the reason for the layoff/reduction in force within the relevant employee pool during the relevant time period.

7. Supply a list of all person hired since Charging Party's layoff, identified by name, race, national origin, age, job title at hire, and date of hire.

8. Submit performance evaluation and disciplinary history of Charging Party for the past three years.

9. Did Charging Party complain of racial discrimination? Was it investigated? What was done?

10. Was Charging Party eligible for early retirement? Was it offered? Were any employees affected by the layoff given early retirement benefits? Who? If so, list by name, age, race, national origin, title, and date of hire.

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
December 14, 1994 Rec'd 12/16/94

R. H. Seraydarian
Director, Management and HR
Loral Federal Systems

Charge No.: 100 94 0796
Charging Party: Momcilo Cvijanovic

Dear Mr. Seraydarian:

Since I am unable to contact you by telephone, please contact me upon receipt of this letter at (202) 275-7045. I am still awaiting your response to the requested information. I need the following information immediately:

> -work force profile before and after layoff. Submit by name, age, and national origin. Submit name, age and national origin of those employee who were laid off.

Specifically, please response to the request for information in items number 2 and 3 of the original request for information.

Because of our communication problem, a fact finding conference may be the most expeditious method for resolving this charge. Let's discuss.

Thank you for giving this matter your immediate attention. Our fax number is (202) 275-6834

Sincerely,

Larry Turner
Investigator

July 5-1994 14:16 FROM LORAL -FS-PERSONNEL TO EEOC

Ms. Mazie Downs, EEOC
Washington Field Office

Re: Mr. Momcilo Cvijanovic Charge No. 100940796

Dear Ms. Downs:

This letter and attachments provide the Loral Federal Systems Company's (formerly the International Business

Machines Corporation and hereafter referred to as "Loral") response to the above referenced charge of discrimination.

During the summer of 1993, several workload imbalance existed in the VLSI production line. As a result, in July Mr. Cvijanovic, Mr. Potter and two other exempt engineers were temporarily assigned to the module assembly department to assist in relieving a workload imbalance. This was a temporary assignment and Mr. Cvijanovic's position classification was not changed nor were the terms and conditions of his employment affected. Upon completion of the assignment all four engineers either returned to their former positions or charge hours against a non-productive "9010" work package[1].

As required, management completed a skills assessment worksheet for each employee in the skill family. All of the employees in the skill family not declared surplus had more competitive skills that Mr. Cvijanovic. Management determined that Mr. Cvijanovic was deficient in the following areas:

TECHNICAL:
Poor analytical ability
Inability to consistently draw accurate conclusions from data

BUSINESS:
Often makes commitments beyond capabilities

CONTINUING RESPONSIBILITIES:
Unsatisfactory communication skills

---

[1] 9010 is a work package which captures labor cost for direct employees who are not assigned to a billable project due to workload declines.

Rarely listens to other (peers/management)

The primary factor in the resource reduction process was the comparison of the skills each employee possessed versus the defined criteria for the skill family. Mr. Cvijanovic was clearly one of the least competitive engineers in his skill family. His lack of a broad technical skill base, his inability to meet commitments and his poor communication and listening skills limited his ability to successfully compete with his peers. The requirements of the business unit evolved from specialists to integrated production employees and Mr. Cvijanovic had insufficient skills to successfully compete in the new environment.

There is no basis to Mr. Cvijanovic's claim that Loral discriminated against him on the basis of his national origin. Management did not consider Mr. Cvijanovic's national origin in either his job assignments or the resource action and, while Mr. Cvijanovic raised two incidents of inappropriate remarks in the work place, management acted immediately when notified and there is no evidence that management based any of their decisions on his having come forward with his complaints. There is also no basis to Mr. Cvijanovic's claim that Loral discriminated him on the basis of his age. The facts show that management did not consider Mr. Cvijanovic's age in either his job assignments or the resource action. Mr. Cvijanovic was not replaced by a younger employee as he claims, particularly in light of the fact that his job as a diagnostic engineer was not given to one particular person.

Loral's changing business environment and Mr. Cvijanovic's lack of requisite skills and capabilities and not his national origin, age nor retaliation, was the reason his position was eliminated and his employment was terminated by Loral. It is also clear from the facts that any similarity situated employee's position would have been eliminated and their employment would have been so involuntarily terminated. Therefor, Mr.

Cvijanovic was not subject to unlawful discrimination in regard to his employment with Loral.

In conclusion, because Mr. Cvijanovic's claim is unsubstantiated and without merit, Loral respectfully requests that the Commission enter a finding of No Probable Cause.

Sincerely,

R. H. Seraydarian
Director, Management Services and Human Resources

APPENDIX F

Performance Planning, Counseling & Evaluation
Annual Performance Evaluation, Appraisal Rating Confirmation

EMPLOYEE: Name: CVIJANOVIC, MOMCILO
OCT 15 1993

POSITION: Title: STAFF ENGINEER/SCIENTIST
Date in Position: 03/08/86

PERFORMANCE DATES: Performance Period: From 09/92 To 09/93
Date Performance Plane Reviewed with Employee: 04/06/93

Date of Performance Evaluation: 10/11/93

Organization Mission/Objectives:

Department VM3 is responsible for the development and technical support of present and future 1st Level Packaging technologies for VLSI applications.
Other responsibilities include 1) Module Burn In: production and development, 2) Production Diagnostics, 3) DPRO and project administrative support. 4) Materials Incoming Receiving and Inspection and various other general VLSI support activities. These responsibilities are to be concluded at the highest quality level, lowest cost with the highest customer satisfaction.

** This plan is written for "meets requirements".**

Performance Planning
Product/ Service - Key words to describe the major outputs expected from the employee. They must address individual and/ or team market driven quality objectives based on customer

requirements that the employee can reasonably be expected to achieve. The assessment should be a measurement of the employee's contribution to the achievement of the organization's goals and customer satisfaction objectives.

Primary Task and Responsibilities!

Key contributing member of the VLSI Diagnostic Team:
Principal expertise - Logic Products.
Product diagnosis and evaluation of wafer and module assembled product lots.

Trend analysis to identify reoccurring events, defects for improvement action plans.

Secondary expertise - Memory Products
Maintain Memory Products expertise
Provide diagnostic backup as necessary
Activity participate in the Diagnostic Transfer Plan

Product/ Service key words: Planning, Relative Importance: "2"

Provide excellent plans for your assigned tasks to meet the overall program objectives. Plan should provide some innovative content.

Plans must be timely, detailed, accurate and coordinated with others.

Plans must include detailed schedules, with milestones, assumptions, risk assessments and alternatives, manpower requirements, statement of work and justification.

Plans must make efficient use of resources.

Plans must be current and reported on periodically in a timely manner.

Actual Achievement:

Mo, has good analytical skills and builds solid plans for the various exceptional diagnostic/ characterization projects and problems that he is involved with. He is an active member of the diagnostic team and takes an active role especially with respect to the diagnosis of Logic product problems (i.e. AMDS-VCOS, T'BIRD, KORBEL/ SPICOLLI, etc). Although, the prime emphasis this year has been on problems that directly affected line movement or customer deliveries, Mo; should in the future concentrate more on product history analysis to improve the overall line yield performance. He has already initiated activity in this arena.

Level of Achievement: __Far exceeded _X_Exceeded __Met __Did not meet

Product/Service key words: Implementation Relative importance "1"

Takes ownership and be responsible for the innovative and high quality implementation of your assigned task(s) meeting all program objectives. Insure adequate reviews and control of your work. Anticipate and identify problems, providing innovative solutions.

Insure that schedules and cost objectives are met. Generate, maintain and control the documentation to support your tasks. Insure proper communication with management, team leaders and others that you interface with to perform your task(s).

Actual Achievement:

As he is a critical member to the overall VLSI diagnostic effort, Mo is extremely committed to accepting the responsibility of driving the analysis of a problem to a quick conclusion. This enthusiasm at time has lead him down the wrong path, but; Mo due to his vast experience in semiconductors and product design

and test has been able to quickly recover. He accepts the responsibility of the task at hand and will do so without hesitation and with resolve. He at times will be handling many task, interfacing with many organizations trying to shuffle a full plate. This sometimes is a challenge. Most recently, he was recruited to assist the Mod Assembly team during a significant workload period. He performed exceptionally well (certification in record time) and continues to receive accolades from both the team leads and the management of the area.

Level of Achievement: __Far exceeded X Exceeded __ Met __Did not meet

Product/Service key words: Leadership Relative Importance " 2"

Provide and be accountable for technical direction and results of your assigned task(s). Provide a smooth work flow and be a positive influence. Provide the complete technical interface for your assigned task(s). Take initiative to expand your technical sphere of influence.

Actual Achievement:

Mo, at time has assumed the chairmanship of the weekly diagnostic meeting and has run that meeting to a successful conclusion. He prepares the actions and plans for VLSI Technical meeting and presents to management and peers. Mo is a self started (evidence of his immediate contributions during his temporary line assignment). He is aided by the many years that he has been in this type of the business (product design, fabrication, test and diagnostics) and takes the initiative to use the technical resources at his disposal, picking up tasks when others may have dropped them and driving continuously to reach a problem conclusion.

Level of Achievement: __Far exceeded X Exceeded __Met __Did not meet.

Product/Services key words: MDQ/Customer Satisfaction, Relative Importance 1.
Understand and support IBM's commitment to MDQ and customer satisfaction. Tasks and plans must adhere to MDQ practices. Identify and provide best technical solutions to customer problems. Maintain a positive working relationship with your customer and achieve a high customer satisfaction. Participate and lead MDQ activities initiate process improvements.

Actual Achievement:

Mo's commitment in this area of responsibility can clearly be demonstrated in his temporary assignment to the mod Assembly area. He quickly and openly accepted this assignment with the highest level commitment to achieve the best and optimum level of performance and customer satisfaction which he could attain. He clearly achieved this with positive feedback from that entire team and he was openly accepted within the group and quickly recognized as a leader within this production group. In his normal assignments, he tries very hard to portray this approach, but; due to the sensitivity of the type of work that he performs (identifying sources of problems in supportive areas) at times his enthusiasm is not fully understood.

Level of Achievement:__Far exceeded X Exceeded __Met __ Did not meet.

SUMMARY

Product/Service Assessment:

Level of Achievement: __ Far exceeded X Exceeded __Met __Did not meet.

Continuing Responsibilities: Indicate significant impact on performance. Positive or Negative impact must be explained in the evaluation of specific responsibilities.

Level of Achievement:	Positive	Negative	Neutral
Adaptability/Flexibility	X		
Communication			X
Interpersonal/Participatory skill			X
Ability to Learn/Apply	X		
Dependability	X		

OVERALL RATING.

Considering all factors, check the definition which best describes this employee's overall contribution during the past period.

[ ] Results far exceeded requirements - Superior Contributor.
[ ] Results consistently exceeded requirements - High Contributor
[X] Results exceeded requirements - Contributor
[ ] Results met some or all of the requirements; however, based upon total contribution, improvement may be necessary.
[ ] Immediate improvement is necessary based upon low relative contribution or failure to meet one or more key responsibilities, (on notice).

COMMENTS:

Record here only those additional significant items brought up during the discussion by either you or the employee which are not recorded elsewhere in this document.

Mo and I (Mike Palmer Manager) discussed this appraisal and topics of Mo's approach to his job - especially his willingness to accept the xxxxx xxxxxxx assignment - a perfect example of his strong ability to adapt and be flexible.

Mike M. Palmer — 10/11/1993
Manager — Date of interview

Employee Review:

Optional Comments: If the employee wishes to do so, any comments concerning the performance plan or evaluation (for example, agreement or disagreement) may be indicated in the space provided below.

I have reviewed this document and discussed the contents with my manager. My signature means that I have been advised of my performance status and does not necessarily imply that I agree with this evaluation.

Employee's Signature — 10/11/93
Date

Management Review:

Optional Comments: I Greatly appreciate Mo's team spirit in the running of our business.

Don Taylor (second line Manager) — 10/12/93
Reviewer's Signature — Date

APPENDIX G

MANAGEMENT USE ONLY
Attachment B

EMPLOYEE SKILL WORKSHEET

Employee Name: Mo Cvijanovic Departement: T31
Current Title: Staff Engineer Scientist Serial Number: 974803
Date in Level: 3/8/1986 Pos. Code/Levl 5806-55-Q

Last Three Appraisals:	Date
3	9/28/91
3	9/28/92
3	10/11/93

Is most recent appraisal new level (Y/N0) N
Appraisal index 3

Employee's Relevant Position/Skills/Experience

Technical

Responsible for logic circuit electrical data analysis.
Poor Analytical ability, often drawing improper conclusions from data.

Business

Eagerly Volunteers to meet Business needs, often commits to volume of work far behind his capabilities.

Continuing Responsibilities

Unsatisfactory Communication skills. Quick to speak his opinion but rarely listens to others (Peers / Management).

PREPARED By - MANAGER NAME:	Date
Don Taylor	4/6/94

REVIEWED BY - MANAGER NAME:	Date
Gino Manzo	4/6/94

SURPLUS __X__ YES _____ No

LORAL CONFIDENTIAL

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APPENDIX H

IBM CONFIDENTIAL & PERSONAL

RANKING WORKSHEET
MIDDLE MANAGER

EMPLOYEE
MANAGER: ED SPALL GROUPING: STAFF ENGINEER

DEPARTMENT(S):ADVANCED TECH. LAB LEVEL(S): 55
DATE: 1/4/94

DISTRIBUTION POSITION	EMPLOYEE NAMES	COMMENTS/NOTES
	S.WILLIS	CONTRACT PERFORMANCE SITE; TECHNICAL EXPERTISE
TOP 10%	T. MCINTYRE	MULTI-SITE TEAM & CROSS FUNCTIONAL LEADERSHIP
	S. JONES	LEADERSHIP AS CUSTOMER INTERFACE

MIDDLE 80%	T. BACH	V. FRANK	D. SHERICK
	M. BEAR	T. HATTON	S. SCANDALIS
	J. BIALAS	W. HILL	J. SHUMAKER

MIDDLE 80%	R. BROWN R. KAMOCOAI B. SUJLANA M. CONNERS R. MOCK R. WILLIAMS W. CRNKOVICH P. PALUMBO. W. WILLIAMS S. DOYLE J. PENA R. DRAPER R. POWELL	
BOTTOM 10%	C. COLEMAN	OFTEN NEEDS MANAGEMENT DIRECTION
	M. CVIJANOVIC	ATTENTION TO DETAIL & COMMUNICATION SKILL IMPROVEMENT
	R. ABBOTT	LOW CONTRIBUTION TO VLSI

NOT RANKED:

S. BURKE MATERNITY/FLOA
S. MCKENZIE - PARENTING LOA
L. MURGIA PARENTING LOA
J. MENZIE FLOA
G. JUNG 9010
D. BUCHOLZ-ED-LOA

-APPENDIX I

9500 Godwin Drive
Manassas, Virginia 22110

RE: Momcilo C. Cvijanovic

Dear Ms. Dickey:

We have been retained by Mr. Cvijanovic to investigate his claim of discrimination under Title VII of the Civil Rights Act. We request that IBM refrain from taking any adverse action until an investigation of his charge can be completed.

Please direct all correspondence regarding this matter to our firm.

If you have any questions, please call.

Very truly yours,

Thorsey and Roane, P.C
A. Richard Thorsey

cc: Mr. Momcilo Cvijanovic

APPENDIX J

Momcilo Cvijanovic
8883 Sweetbriar Street
Manassas, VA 22110
Tel. (703) 368 1741

This summary was sent to Mr. Larry Turner at EEOC August 18, 1994. Discrimination/Retaliation/ Age Discrimination Slanderous/discriminatory remarks regarding my religion and nationality in Feb of 1993.

Both admitted to making Slanderous/discriminatory remarks After investigating Personnel says that remarks were meant as joke.

Personnel could not force them to give any formal apology. As a result of me going to personnel about the Slanderous / discriminatory remarks regarding my religion and nationality, IBM management started retaliating against me in the following way:

> I was put on 50 percent 9010, which means that I cannot handle any product or work on contract without charging the contract. On many occasions I was told to do contract work while charging 9010.

In July of 1993 my diagnostics job was given to Tom Potter. **(Marie Wray - (703)367-1319 (W), (301)585-9729 (H))** In July of 1993 I was put on the module line to do no technical work due to the extra work load. I was told by my manager, Mike Palmer, other engineers and managers would also be working on the module line. For the three months that I worked in the module line, no other engineer or manager

came to work in the module line. **(Stella Clark - (703)680-3831, Clara Robinson (703)327-2032, Steve Rogers (703)829-6728, and Chuck Beatty)**, are the witnesses.

As a result of being the only engineer (with a Masters Degree) downgraded to the module line, I felt humiliated.

This caused a lot of stress within my family. While working in the module line, I was called on many occasions to help solve/work diagnostics problems. I was down graded to work in the module line, yet on several occasions I was requested to help in solving difficult diagnostics problems (DCU and 1Meg chip).

On August 23, 1993 I wrote a suggestion on how to fix gross leaks on modules. The suggestion was rejected. I was told that a study had been done showing it could not be done, yet I was able to successfully demonstrate my suggestion to other engineers in the module line. My suggestion was rejected because if it was approved it would have been significant. In addition they would have to give me recognition and compensation (financial) for my suggestion.

My January 1994 progress was not included in the Department Progress report. Gary Compeau says he did not know how to merge it with the rest of the progress report.

In December of 1993 Don Taylor comes to my office to talk to me about an ITO package.

*Conversation 1: December 14, 1993 at 8:47 AM
Don asks about my future plans. My reply was that I wanted to continue to work for several more years. Don says IBM is going through some very tough times and there is not much

work coming in. Future is uncertain. Would you be interested in an ITO package? I said I would like to see the offer.

*Conversation 2: December 20 1993 at 7:45 AM
Don Taylor call me to his office. He (Don) says would I be interested in getting an ITO package with 6 months salary? I told Don I would discuss this with my family and get back to him in a couple of days.

*Conversation 3: December 22, 1993 at 11:0 AM
After discussing with my family, I told Don Taylor that I would be willing to take the above ITO package, even though my family had a lot of concerns.

*Conversation 4 (Don Taylor and Gary Compeau):
January 6, 1994 at 10:30 AM
Don was very mad that I discussed our earlier conversations with Dick Bedner (A Manager). Don told me keep your mouth shut and do not discuss this with anyone else and I will get this package for you.

Don stood up and said lets shake hands. This meant to me that we had a deal and I would get the ITO package.

*Conversation 5 (Gary Compeau):
January 10, 1994 at 7:50 AM
Gary told me that Don could not get me the ITO package. I was very distressed because my family made a tough decision.

*Conversation 6 (Don Taylor): January 17, 1994 at 8:45 AM
I went to see Don why I would not be getting the ITO package. Don said He (Don) could not get me the ITO package, because it does not exist.

I asked Don why did we shake hands? He said he just could not get me the package.

I escalated this to Ed Spall, who is Don Taylors manager. Ed said that Don is denying what he told me. I told Ed Spall there are other engineers in Ed's area that have the same years of service as I do and yet there managers did not ask them if they wanted to take an ITO package. I asked Ed why I am being isolated in taking this ITO package. Ed did not know.

I then went to Mike Dawkins, who is the plant manager. Mike said he would have this investigated because there was something that did not make sense to him (Mike). Rich Seraydarian, the investigator, said that Don Taylor denied guaranteeing me the ITO package. I asked Mr. Seraydarian to get Gary Compeau, Don Taylor and me in his office so that I can ask Taylor what did he mean when he told me to keep my mouth shut, and he will get me ITO package. Mr. Seraydarian refused it.

On April 14, 1994 I was told by Don Taylor that my job was being eliminated. I feel that I was layed-off not due to my job being eliminated but because of my age. There were many other people in the project that had no work but they were not layed-off. On April 4, 1994 I was requested to do diagnostics work on a memory product. Prior to this I was given several other diagnostics assignments. My job is not eliminated, but in fact Mr. Tom Potter is doing now, which is 3 years later since they laid me off.

This is the truth nothing but the truth so help me god.

Momcilo Cvijanovic

APPENDIX K

CHAIRMAN OF THE JOINT CHIEFS OF STAFF
Washington

December 29, 1958

TO WHOM IT MAY CONCERN.

Mr. Stanley Taxel has informed me that he is seeking American citizenship for Mr. Momcilo Cvijanovic, the son of a Yugoslavian family which sheltered him during World War II after his plane was forced down in enemy held country.

I honestly feel that we in the United States owe a tremendous debt of gratitude to people like the Cvijanovics, who risked their lives repeatedly and exposed themselves and their families to violent reprisals in order that American airmen could live. We have here an opportunity to express our thanks and appreciation for everything this family has done to help us. It would seem to me that this case should be given very careful thought and expeditious attention.

N. F. TWINING
Chairman, Joint Chiefs of Staff

Stanley Taxel, right reacts emotionally as he is reunited Saturday with Yugoslav Dragutin Cvijanovic, 80 , who risked his life to shelter 12 American soldiers, shot down during World War II.

Former GI Remembers War And Dragutin Cvijanovic
By Joe Tinkelman-Poughkeepsie Journal Staff Writer

"If you go to Yugoslavia, don't be afraid. They are beautiful people. If you are lost, you will fined a friend. If you can not fined a place to eat, someone will feed you. If you have flat tire someone will help you." - Stanley Taxel.

WAPPINGERS FALLS- Stanely Taxel, a Manhattan stationery manufacturer, was reunited Saturday with Dragutin Cvijanovic the 80 year old man who saved his life and the lives of 11 other Americans in the Yugoslavian highlands 29 years ago.

The reunion took place at the Wappingers Falls home of Dragutin's son Momcilo who was brought to the United States in 1959, chiefly through the efforts of Taxel.

The elder Cvijanovic sheltered Taxel and the rest of his 11 man B-17 bomber crew after they were shot down during a mission in January, 1945. Toward the end of their stay at the Cvijanovic home, Dragutin was to make the critical decision which saved the lives of all of the men.

Taxel and the rest of the crew were found by the Cetniks, an underground group loyal to the Allies, after the plane crash-landed in a mountain range in Yougoslavia.

"We were on our 48th mission," Taxel said. "I would have had two more missions and I could have gone home. As it turned out, I'm glad we were shot down over Yugoslavia."

The Cetniks were only one of several underground groups operating in Yugoslavia during World War II. There was also the Partisans who were aligned with Allies, but were Communist, and therefore fierce rivals of the Cetniks.

The Cetniks brought the bomber crew to the little village of Celinac, near the City of Banja Luka. It was there that the crew found a home with the Cvijanovics.

Almost daily, Dragutin would go into the village to gather intelligence in regard to the whereabouts of the Germans and their underground allies, the Ustashis.

Momcilo was 10 when his father offered the Americans a home during the war. Today, he has only vague recollection of the events that brought his family 12 guests for the winter.

"I remember building a snowman with the Americans," Momcilo said. "And I remember sleeping on my father's feet to keep him warm."

"That's the important thing to know about the Yugoslavia," Taxel said. "They have high regard for older people. Here is a ten-year-old boy who slept at the foot of his father's bed so that his feet would be warm. That kind of respect doesn't exist here."

Often Dragutin would receive word that the Ustashis were in the immediate area, and the crew would be moved up into the mountains by the Cetniks.

"Their concern for us was based on their high regard for America," Taxel said. "They were willing to do everything, including risking their lives, to save us from the Ustashis or the Germans."

"We ate the same food the rest of the family ate," he continued. "Whatever the mother fed the children, we got our share. Whenever she killed a chicken, we got part of it."

Eventually two more Americans parachuted behind the German lines, and the Cvijanovic's household grew to 12 American soldiers in addition to Dragutin, his wife and their six children.

"It was the burden of feeding that became the most difficult," Taxel said. "This man laid it all on line for us," he said, "his life and the lives of his family."

Finally, Dragutin had to make the decision that was most difficult. He had to place the crew in the hands of the Partisans. "Dragutin knew," Taxel explained, "that the Cetniks for all their good intentions lacked the capability to help us get out of

Yugoslavia." One day, Dragutin told Taxel, "The only way for you to get out of the country is to go to the Partisans."

Taxel then developed a plan to trick the Cetniks and the crew separated from the group and made contact with the Partisans. The underground group made the necessary connection to get the crew out of the country and back to Italy just a month before the end of the war.

Once he returned to the U.S., Taxel kept in close contact with the Cvijanovics and was eventually responsible for Momcilo's emigration to the country. A length process which included trips to Washington, appeals to the Joint Chiefs of Staff, and to congressmen led to the granting of a visitor's visa for Momcilo. Taxel assisted Momcilo in finding a job, and helped him gain acceptance to the State University at Farmingdale where he earned a degree in electronics. Momcilo has since moved to Wappingers Falls, and is employed as an associate engineer at IBM, Fishkill. He recently earned a master's in physics at Vassar College.

Taxel said he had told Momcilo's father during the war that one day he would bring one of his children to the U.S. "For all Dragutin had done for me," Taxel said. "It was the least I could do." Momcilo's brother Milorad came to the U.S. in 1966. He is employed as a toolmaker, and lives in Pleasant Valley. Taxel terms the entire experience as his 'blessing in disguise."

I learned how to persevere, to live in a communal family group that could withstand anything because they were like one. They were together."

"Today, " Taxel added, "I relay very heavily on the experience with the Cvijanovics. When things get very heavy for me, I think back to the mountains and I remember Dragutin." Taxel paused and hugged the old man who cannot speak English. "It's so good to see him again," he said.

Eight of the 12 American members of the Cvijanovic "family".

POUGHKEEPSIE JOURNAL SUNDAY, JUNE 16, 1974

George A. Daniels, a World War II American flier who was shot down over Yugoslavia 30 years ago, embraces Vasilia Cvijanovic, 81, the woman who fed and clothed Daniels and his 11 comrades during the four months they spent in Nazi-occupied territory. In the background is Vasilia's husband, Dragutin, 80.

Here's To Cvijanovics
By Joe Tinkelman Journal Staff Writer

Wappingers Falls- Thirty years ago, 12 American fliers, shot down in Nazi - occupied territory shared a lone chicken with a family of eight near Banja Luka Yugoslavia.

The scene was quite different Saturday as four of the fliers were reunited with four members of the family. This time a roast pig and lamb was shared joyfully by friends and relatives of the fliers and the Cvijanovic family, and everyone sang and danced into the night. Three of the fliers had not seen the Cvijanovics since the father, Dragutin, now 80 made the critical decision which saved the lives of the B-17 crew and enabled the men to escape the nazis.

An original crew of 10 crash-landed not far from the Cvijanovic home after an ill-fated mission aimed at knocking out Nazi oil refineries in Vienna, Austria in January, 1945. For the next four months, the fliers, Dragutin, his wife Vasilia, now 81, and their six children shared what little yield there was from their war-torn farm. Only about half of the 10 airmen who were taken in by the Cvijanovics during the war were able to return for reunion.

APPENDIX L

AFFIDAVIT OF SURENDRA SINGH

I, Surendra Singh, being over the age of 18 and a resident of Fairfax County, Virginia, affirm and swear:

1. I was an employee of IBM Federal Systems in Manassas, Virginia during the relevant periods of Momcilo Cvijanovic's case, specifically from June 1988 through February 1994 and for Loral Corporation from February 1994 through April 1994.

2. I have first-hand knowledge of the facts stated herein. Had I been called upon to testify at deposition or trial, I would have sworn and testified to the following:

a. Momcilo Cvijanovic solved the yield problem with the SPE chip. This problem could not be solved by Gino Mazzo or his team for 4 years.

b. Tom Potter did not work in diagnostics until some time in the summer of 1993.

Surendra Singh

Dated: 12/11/96